



**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

David S. Apperson

Plaintiff,

and

**Judge Karena K. Kirkendoll, et al.,
to include
Attorney Brian C. Holden,
Attorney Stephen W. Fisher,**

Defendant(s).

Case No. 3:21-cv-05330-JCC

COMPLAINT FOR THE
DEPRIVATION OF RIGHTS

Jury Trial: Yes

I. Introduction

The Plaintiff brings this action against the Defendants in their personal capacity, jointly and severally, under 42 U.S.C. §§ 1983 and 1985 for depriving the Plaintiff of his Rights, Benefits and Liberty, under color of state law and **in the complete absence of all jurisdiction** on the subject of Disability and on the subject of Federal Rights, and Benefits established by VA Decisions.

This is an URGENT – TIME SENSITIVE ISSUE.

**The Plaintiff is 100% Totally Disabled Veteran
being illegally stripped of his Rights and Benefits by the Defendants.
For the sake of justice, this matter need to be resolved quickly.**

**COMPLAINT FOR VIOLATION OF RIGHTS
UNDER THE COLOR OF STATE LAW**

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8111 Li Fair Dr
Pensacola, FL 32506**

II. Judicial Notice

Please take Judicial Notice of the Adjudicative FACT that this Plaintiff is a 100% Totally Disabled, therefore Unemployable Veteran per VA decisions. He cannot afford an attorney because his resources are limited by disability and financial hardship caused by the illegal deprivation of his Rights and Benefits.

The Adjudicative Fact of “Disability” cannot be disputed in this Court or in any state court, because 38 U.S.C. § 511 clearly preempts all jurisdiction to review, interpret, contradict or ignore VA decisions. In other words, decisions made by the VA make the Adjudicative Fact of “Disability” totally exempt from state jurisdiction by preempting review of the decisions.

III. Parties

Plaintiff:

David S. Apperson
8111 Li Fair Dr
Pensacola, FL 32506
253-905-4292
appersondave22@gmail.com

Formerly residing at:
7200 Sharp Reed Rd #6
Perdido Key, FL 32507

Defendants:

The Honorable Judge Karena K. Kirkendoll - WSBA# 22409
Pierce County Superior Court
930 Tacoma Ave S Rm 334
Tacoma, WA 98402-2108
(253) 798-6640

Individual Capacity

Stephen W. Fisher - WSBA# 7822
6314 19th St W Ste 8
Fircrest, WA 98466-6223
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(253) 565-3900

Brian C. Holden - WSBA# 52780
Felix Advocates
6314 19th St W Ste 8
Fircrest, WA 98466-6223
brian@felixadvocates.com
(253) 380-5452

IV. Basis for Jurisdiction

This Complaint is properly raised under the original jurisdiction of the District Court per 28 U.S.C. § 1331 (Federal Question), § 1332 (Diversity of citizenship), § 1343 (Civil Rights), along with Supplemental Jurisdiction per 28 U.S.C. § 1337, and per 28 U.S.C. § 1331, this Court is the proper Venue having original jurisdiction to enforce federal Rights under 42 U.S.C. § 1983 by Declaratory Judgment under § 2201 (See also Fed. R. CP 57).

Federal Jurisdiction is established by the Complete Federal Preemption of jurisdiction on the Federal Subject of benefits provided by the US Department of Veterans Affairs (VA). Federal Questions of law are raised by Federal Preemption and the obvious conflict between federal and state law. The direct conflict between federal law and state law is resolved in favor of the federal law by the Supremacy Clause of the US Constitution.

This Complaint is “well-pleaded” on the basis of “Complete Federal Preemption” and Diversity of Citizenship, both of which establish the jurisdiction of this Court.

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Even though state law governs alimony and child support orders, federal law governs VA benefits and clearly preempts state jurisdiction, thereby makes the Rights and Benefits totally exempt from state jurisdiction by the Complete Federal Preemption.

See *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 63-64, (1987) and *Caterpillar, Inc. v. Williams*, 482 U.S. 386 (1987) ("There does exist, however, an "independent corollary" to the well-pleaded complaint rule, ... known as the "complete preemption" doctrine. ... Once an area of state law has been completely preempted, any claim purportedly based on that preempted state law is considered, from its inception, a federal claim, and therefore arises under federal law.'") (internal citations omitted)

Legal Evidence of Complete Federal Preemption

Title 38 has been Positive Law for over 60 years. (See Pub. L. 85-857, §1, Sep. 2, 1958, 72 Stat. 1105.), therefore **Sections 511 and 5301 stand as "legal evidence of the law."** (See 1 U.S.C. § 204). There is no exception to § 5301, even for alimony or child support, because state jurisdiction is preempted by § 511 and there is no exception for state authority.

38 U.S.C. § 511(a) "The Secretary shall decide all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans or the dependents or survivors of veterans. Subject to subsection (b), the decision of the Secretary as to any such question shall be final and conclusive and may not be reviewed by any other official or by any court, whether by an action in the nature of mandamus or otherwise."

38 U.S. Code § 5301(a) "(1) Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary."

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V. Complaint In Detail

1) Judge Karena K. Kirkendoll - WSBA# 22409

Whereas Judge Kirkendoll certainly has jurisdiction to make and enforce alimony and child support orders in the process of divorce under state law, she certainly does NOT have jurisdiction to undermine VA decisions by using VA benefits in that process.

Whereas Judge Kirkendoll certainly has jurisdiction to impute income to a “voluntarily unemployed” parent under state law, she certainly does NOT have jurisdiction to undermine VA decisions by finding a totally disabled, therefore unemployable veteran voluntarily unemployed. What looks like an “abuse of discretion” is actually a de facto violation of Rights established by VA decision via the act of predatory discrimination and fraud upon the court. **She knowingly and willfully violated the Complete Federal Preemption** of state jurisdiction on VA benefits for the purpose of causing the Plaintiff harm by abuse, humiliation and discrimination in open (video) court. Her misconduct triggered a health crisis in the Plaintiff sending him to the Emergency Room .

Throughout 2020 and leading to March 16, 2021, Defendant Judge Kirkendoll knowingly and willfully deprived the Plaintiff of his Fourteenth Amendment RIGHTS by using discrimination to hide her abject violation of Federal Preemption by stripping the Plaintiff of his federal Rights and Benefits established by VA decisions, which she did in the Complete Absence of All Subject Matter Jurisdiction on these benefits.

Judge Kirkendoll instantly violated the federal Rights of the Plaintiff by the illegal assignment of his VA benefits under the false pretense of jurisdiction to change the nature and disposition of these federal benefits. She instantly violated his Rights again by the deliberate act of fraud via the abuse of discretion when she added imputed income to his VA benefits for the purpose of causing him greater harm and hardship.

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Judge Kirkendoll ***forcefully ordered*** the Plaintiff to open his medical records to go on a "fishing expedition" (HIPAA violation) for material to harass and manipulate the Plaintiff (ADA violation) by humiliation and by illegal review of his VA claim (§ 511 violation), in order to extract money from his benefits (§ 5301 violation).

1) Attorneys Brian C. Holden - WSBA# 52780, and

Stephen W. Fisher - WSBA# 7822

From the beginning of the Apperson divorce, these attorneys have perpetuated the ignorant myth that state law controls veteran benefits, even though they are fully aware of the Complete Federal Preemption of State jurisdiction found in § 511.

The Defendants have knowingly and willfully committed Fraud upon the Court for the sole purpose of converting veteran benefits into their paychecks. Mr. Fisher especially used the inherent prejudice of Judge Kirkendoll to generate a huge attorney bill based on the fraudulent projection combining the Plaintiff's VA benefits with imputed income.

Both attorneys attacked the personal character of the Plaintiff and systematically used tactics of manipulation to distress him which has had a devastating impact on his health. Again, this is not a small matter of oversight in their practice of law. What they did is predatory embezzlement of federal disability benefits by deliberate fraud and discrimination against a totally disabled, vulnerable person, who is defenseless and who is wiped-out by the cost of defending himself in addition to the loss of his belongings, his home, his relationship with his children and all hope of justice in the Corrupt Court of Washington.

They knowingly and willfully encouraged their client to use parental alienation and false accusations to leverage the children as meal-tickets. They used emotional distress to make it impossible for the Plaintiff to defend himself. They spearheaded the "fishing expedition" to get into the Plaintiff's medical records to manipulate him and humiliate him.

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VI. Complete Federal Preemption Rules-out Immunity

Complete Federal Preemption makes it clear that the entire subject matter of Title 38 is totally exempt from State jurisdiction. Since the state cannot possibly have jurisdiction on veteran benefits, the Defendants cannot possibly have Immunity.

"A distinction as to their liability made between acts done by them in excess of their jurisdiction and acts done by them in the clear absence of all jurisdiction over the subject matter." *Bradley v. Fisher*, 80 U.S. 335,336 (1871) "Where there is clearly no jurisdiction over the subject matter any authority exercised is a usurped authority, and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible." *Id.* at 351-352. (emphasis added)

VII. Federal Preemption Reveals State Corruption, Therefore Rooker-Feldman Does NOT Apply

Rooker Feldman (R-F) doctrine is not triggered just because this Complaint happens to reveal the Complete Federal Preemption. Even if someone brings up the state court orders, the Complete Federal Preemption establishes federal jurisdiction on the federal questions about federal rights which are shown to be exempt from state jurisdiction.

Nothing can validate illegal orders that are VOID **ab initio** for the complete absence of all jurisdiction, but this case is not about orders, it is about the violation of federal Rights. The Plaintiff is not asking the federal court to overturn the state court orders, but to instruct the Defendants by Declaratory Judgment explaining why they cannot violate the federal Rights of the Plaintiff in the state proceedings.

See *Hageman v. Barton* 817 F.3d 611, 615 (2016). ("The doctrine does not apply in federal cases that merely attack the legal conclusions of the state court without seeking relief from the state court judgment."). See also *Noel v. Hall* 341 F.3d 1148, 1164 (9th Cir. 2003) and *Carmona v. Carmona*, 603 F.3d 1041, 1050 (9th Cir. 2008).

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VIII. Federal Rights Claimed by the Plaintiff

- 1) 38 U.S.C. § 5301 establishes a Right to protection of Title 38 benefits from assignment or attachment by any legal or equitable process whatever.
- 2) 38 U.S.C. § 511 establishes a Right to protection of Title 38 benefits by the expressed preemption of ALL jurisdiction to review any part of the VA decisions, to assign or attach the benefits or to interpret any part of Title 38 Federal Positive Law.
- 3) 38 U.S.C. § 511 establishes a Right to the protection from any review of the **Adjudicative Fact of "Disability"** established by VA decisions.
- 4) 38 U.S.C. § 511 establishes a Right to the complete Privacy of VA claim files.
- 5) 38 U.S.C. § 511 and HIPAA establish Rights to the Privacy of Medical Records associated with VA claims. State courts have NO jurisdiction to use the information, therefore NO jurisdiction to probe the federal records.
- 6) Americans with Disabilities Act (ADA), Chapter 126 of U.S. Code Title 42 establishes a Right to use federal enforcement of due process in order to deal with Disability related Discrimination when it happens. The definition of "Disability" found in 42 U.S.C. § 12102 includes ANY impairment, of ANY kind, to ANY degree, and for ANY reason, whether it is visible or not. EVERY separate condition rated by VA meets that definition instantly.
- 7) The Health Insurance Portability and Accountability Act, Pub. Law 104-191 (HIPAA) establishes a Right to the Privacy of Medical Records. It is a clear violation of HIPAA to demand medical records involved in VA decisions.

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IX. Relief

Plaintiff hereby requests the following Immediate Preliminary Relief;

- 1) **Declaratory Judgment** by verification of the Complete Federal Preemption of State Jurisdiction on the Rights and Benefits established by VA decisions.

This should explain to the Defendants why the act of fraud to get around federal preemption is a de facto violation of the Rights covered by this preemption and why the Defendants are Personally Liable under § 1983 for the hardship they cause by their illegal actions.

Congress has made it absolutely clear that these Rights and Benefits are **TOTALLY EXEMPT** from state jurisdiction by Complete Federal Preemption. There is no excuse for the misconduct of the Defendants.

- 2) **Injunctive Relief** by explaining why the Defendants cannot assign or attach VA benefits and why they cannot impute income to disguise the violation of Rights, and why they cannot use Contempt or Incarceration, or any other means of coercion to extort money from the Plaintiff.

And further relief by Trial

- 3) Schedule a Jury Trial to determine **Punitive Damages** because the Defendants are Personally Liable for deliberate acts of predatory misconduct in the complete absence of all jurisdiction.
- 4) Any further relief deemed necessary and appropriate by the Court.

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X. Closing and Certification

Federal Preemption is not meant to deprive any dependents of support.

It is intended by Congress to protect our whole nation from the cost of predatory fraud and misconduct by corrupt attorneys, officials and judges.

The Defendants knowingly and willfully deprived me of Rights, in order to deprive me of benefits, and thereby deprive me of Liberty, under the color of state law and in the complete absence of all jurisdiction to do so.

They have no regard for Due Process where veterans are concerned. I am absolutely sure that I am not the only veteran they have attacked and abused in this way. Everywhere I have looked for help and information I have found stories of similar predatory fraud upon veterans. The prejudice is systemic and nationwide. I am fighting for my life.

Disability is not an excuse to get out of child support.

It is the **Big-Red-Flag** which is supposed to tell the Court that this individual with disability has certain federal Rights which cannot be ignored. That does not mean veterans are excused from supporting their children or exempt from state jurisdiction otherwise. Federal Preemption simply removes the Fact of Disability from State jurisdiction along with the VA benefits.

The Complete Federal Preemption of State Jurisdiction establishes Federal Jurisdiction on this matter.

The Question of Immunity is answered by the Federal Preemption.

The Question of Federal Preemption is answered by Positive Law and by the Supremacy Clause.

Please issue Declaratory Relief by explaining to the Defendants why my Rights are Totally EXEMPT from state jurisdiction and why they are personally liable for the harm they have caused. Then we can proceed to Jury Trial for Punitive Damages.

CERTIFICATION

I hereby certify this Complaint is accurate and true to the best of my knowledge, information, and belief, per Federal Rule of Civil Procedure 11;

- (1) This Complaint is presented for clear and legitimate purpose, therefore is not to harass, cause unnecessary delay, or needlessly increase the cost of any litigation;
- (2) This Complaint is well supported by existing law and reasonable argument based on that law, therefore is not frivolous and it is not intended to extend, modify, or reverse any existing law;
- (3) The factual contentions have evidentiary support and will very likely have more support after a reasonable opportunity for investigation and discovery; and
- (4) The Complaint otherwise complies with the requirements of Rule 11.

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Respectfully submitted by:



on 27 April 2021

David S. Apperson

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Page: 1

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